

App. No. 10/721,631

Request for continued examination under 37 CFR §1.114

**REMARKS**

Claims 1-55 remain pending and under consideration. Claims 1, 24, and 48 are independent claims. Claims 15-17, 20-23, 25, 39-41, 44-47, have been amended. Reexamination and reconsideration of the application, as amended, are hereby respectfully requested.

Applicants acknowledge acceptance of the drawings filed on 11/25/2003, and entering of the preliminary amendment of 03/24/2004.

***Claim Objections***

Claims 21-23, 25, 39-41, and 44-47 were object to in the Office Action dated 09/23/2005 due to minor informalities. The objections are overcome, since it is believed that the Claims, as amended herein, have been corrected so as to remove said informalities.

Regarding Claims 21, 22, 45, and 46, "the inner face" has been replaced by an inner face of the walls, thereby remedying the lack of antecedent basis for "the inner face". These amendments are not narrowing amendments.

Regarding Claims 23 and 47, the word "refracted" is the correct one. It should be noted that the refractive index of the waveguide is typically larger than that of the interior volume. When this is the case, a ray propagating along the horizontal waveguide is *refracted upward* upon encountering a waveguide end face that is tilted *downward* (as in Fig. 8B). Applicants respectfully submit that "refracted" and "downward" are the correct terms. However, Claims 23 and 47 have been amended to recite that at least a portion of the emergent light is refracted upward, since divergence of the emergent beam may include portions that are directed downward in spite of the overall upward refraction at the waveguide end face. These amendments are not narrowing amendments, and were not made for reasons related to patentability.

Regarding Claim 25, the word are has been inserted after the word "walls", as suggested by the Examiner. This amendment is not a narrowing amendment.

Regarding Claims 15-17, 23, 39-41, and 47, the word "photodetector" has been replaced by the phrase detector substrate, as suggested by the Examiner for Claims 39-41 and 47. Claims 15-17 and 23 are similarly amended to maintain consistency. These amendments are not narrowing amendments.

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Regarding Claims 20 and 44, the word "photodetector" has been replaced as suggested by the Examiner for Claim 44. However, Applicants respectfully submit that the phrase active area of the detector substrate is more suitable substitute language, given the reference to electrical contacts in Claim 44. Claim 20 is similarly amended to maintain consistency. These amendments are not narrowing amendments.

Regarding Claim 46, the word "is" has been deleted as suggested by the Examiner. This amendment is not a narrowing amendment.

### ***Other Claim Amendments***

In a case recently decided by the United States Court of Appeals for the Federal Circuit (CAFC), however, certain language in one of the patents at issue, similar to language originally employed in some of the claims of the instant application, has been construed in a manner differing from that intended by the Applicants. It is not clear whether the CAFC claim construction is specific to the fact patterns of the decided case, or may be applied more generally. Accordingly, the claims in question have been amended so as to ensure that the claims will be construed in the manner originally intended by the Applicants.

The recently-decided case is *Superguide Corporation v. Directv, Inc.* (CAFC 02-1561, -1562, and -1594, decided 02/12/2004). At least within the context of *Superguide*, the Court has interpreted "at least one of" followed by a conjunctive list of items in the patent in suit (US 5038211) to mean at least one of *each* item in the list. In the instant application, the Applicants intended "at least one of" followed by such a list to mean at least one item *from* the list. It is presumed that this was the interpretation of the Examiner as well. Since the claim construction of the CAFC in *Superguide* may at least raise the possibility of a narrower claim construction than that intended by the Applicants, Claims 17 and 41 have been amended. In each instance, the phrase "at least one of" has been deleted, and the conjunction "and" in the subsequent pair or list of items has been replaced by the conjunction "or". The conjunction "or" is to be construed inclusively (e.g., "a dog, a cat, or a mouse" would be interpreted as "a dog, or a cat, or a mouse, or any two, or all three"; Bryan A. Garner, Elements of Legal Style p. 103, 2nd ed. 2002), unless: i) it is explicitly stated otherwise, e.g., by use of "either...or", "only one of", or similar language; or ii) two or more of the listed

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alternatives are mutually exclusive within the context of the claim, in which case "or" would encompass only those combinations involving non-mutually-exclusive alternatives. Applicants believe that this amendment does not change the scope of the amended claims from the originally intended scope. In particular, the amendments are not narrowing amendments.

***Conclusion***

In view of the above, it is submitted that Claims 1-55 remain in condition for allowance. Reconsideration of the objections is respectfully requested. Allowance of Claims 1-55 at an early date is earnestly solicited.

Respectfully submitted,

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